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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,032	10/03/2000	Mark B. Lester	1671-0099	5677

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EXAMINER

LANDREM, KAMRIN R

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/678,032	Applicant(s) LESTER ET AL.	
	Examiner Kamrin R. Landrem	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 31-44 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31,32, 36-39, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Amstutz et al.

With reference to Figure 6, Amstutz discloses an acetabular cup 18 having an apex and upper rim 58 that is configured to be press-fit into a cavity prepared in the acetabulum. Although Amstutz does not specifically recite a reamer having a cutting head configured to ream a hemispherically shaped cavity, it is inherent that the hemispherical cup 18 would require a hemispherical reamer (reamer capable of creating a hemispherical shape) (7:6-10) Figures 3 and 5 show the plane (P₁) in which the shell forms a “great circle”. Focusing back on Figure 6, a second plane (P₂) that defines an imaginary hemisphere is shown. The cup 18 is can be precisely hemispherical or to avoid impingement the cup 18 may be 1 or 2 millimeters less than a hemisphere. This shape would then render a distance (D) between the “great circle” and the imaginary hemisphere that ^{falls} ~~fails~~ within the applicants claimed range (6:5-8). Amstutz further discloses a bearing insert 16 configured to be received with the acetabular cup 18 and is further configured to mate with head portion of the femur 12. The cup 18 and its upper rim 58 lie flush with the surface of the cavity of the acetabulum (7:36-42).

8-20-04

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33-35 and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amstutz in view of Pratt et al.

As discussed above, Amstutz discloses the claimed prosthetic hip however Amstutz fails to teach the method of “under reaming” wherein the head of the reamer has a first radius and the imaginary hemisphere formed by the acetabular cup has a second radius, the first radius being smaller than the second radius. Pratt et al teaches an acetabular cup and reamer assembly wherein the surgeon inserts a cup that is 2 mm larger than the final reamer used to insure a correct and stable interference fit (2:7-12). Therefore in view of the teachings it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the procedure disclosed by Amstutz to include a ream a cavity that is smaller than the intended cup implant in order to create a secure interference fit that aid in preventing loosening of the prosthesis after implantation.

Response to Arguments

The objections to the drawings and to claims 31, 37, 38 and 44 have been withdrawn. Applicant's arguments filed 5/10/04 have been fully considered but they are not persuasive. The cylindrical reamer of Amstutz is configured and capable of reaming a hemispherically shaped cavity (7:3-31). The shape of the reamer is unimportant as long as it is capable of creating a

Art Unit: 3738

hemispherically shaped cavity. The reamer of Amstutz is in fact capable of this. With reference to column 6, lines 5-9, Amstutz discloses that the acetabular cup can be hemispherical and thus laying coincident with an imaginary hemisphere (P1) **or can also be a millimeter or two less than a hemisphere** thus resulting in a cup in a plane (P2) that inherently lies geometrically parallel to P1 but spaced a distance of one or two millimeters.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamrin R. Landrem whose telephone number is 703-305-8061. The examiner can normally be reached on 8:00-5:00, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kamrin Landrem
Examiner
AU 3738

krl



David H. Willse
Primary Examiner